THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 12797 of 2006

O r d e r:

The petitioner was appointed as a Conductor in the respondents-APSRTC on 16.01.1991. On 10.03.1999, while he was conducting the bus, a check was exercised by the checking officials, who issued a charge memo. Pursuant thereto, pending enquiry, the petitioner was placed under suspension vide proceedings dated 15.03.1999. The Enquiry Officer, having conducted the enquiry, submitted his report stating that the charges leveled against the petitioner are proved. Based on the enquiry report, a notice dated 28.09.1999, was issued to the petitioner to show cause as to why he shall not be removed from service. The petitioner submitted his explanation thereto on 05.10.1999. Upon consideration of the same, the 1st respondent-Depot Manager, passed an order dated 08.10.1999 removing the petitioner from service. Assailing the said order, the petitioner preferred an appeal, which was rejected by the 2nd respondent-Deputy Chief Traffic manager, vide order dated 01.03.2000. Aggrieved thereby, the petitioner raised an industrial dispute in I.D. No.45 of 2000, and the Labour Court, vide award dated 06.03.2002, set aside the order of removal, passed by the 1st respondent, as confirmed by the 2nd respondent in appeal, and directed the respondents to reinstate the petitioner into service with continuity of service but without back wages by stopping one annual increment with cumulative effect. Questioning the said award insofar as it directed stoppage of one annual increment with cumulative effect and denying back wages, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the Labour Court having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate authority, and having ordered his reinstatement into service, ought to have granted the consequential reliefs that ensue upon reinstatement, and non-granting of the same, is illegal and arbitrary, and more so when the petitioner was not gainfully

employed during the period he was out of service and reinstated into service.

The learned Standing Counsel for the respondents-APSRTIC, however, supported the impugned order. He submitted that the charges against the petitioner stood proved. Though the disciplinary authority passed order of removal, which was confirmed by the appellate authority, the Labour Court, though concurred with the view of the disciplinary authority, has taken a lenient view and ordered reinstatement of the petitioner subject to certain conditions, namely stoppage of one increment with cumulative effect and without backwages, and the same cannot be said to be an illegal or arbitrary award, and prayed that no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

On the charges leveled against the petitioner, an enquiry was conducted. In the enquiry, the charges leveled against the petitioner stood proved. The lady passenger, who was found traveling without ticket, in her statement stated that the petitioner having collected Rs.2.50 ps., from her, had not issued the ticket. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal, which in appeal was confirmed. However, the Labour Court has taken a lenient view and ordered reinstatement of the petitioner into service without backwages and by stopping one annual increment with cumulative effect.

It is a case of failure of ‘issue and start’, non-issuance of ticket to one lady passenger, and failure to close SR at the time of check. The

charges leveled against the petitioner stood proved in the enquiry. The Labour Court, in fact, concurred with the findings of the disciplinary authority and the appellate authority that the petitioner having collected fare from the lady passenger intentionally avoided issuing ticket to her and failed to close the SR by the time of check. Non-issuance of ticket by collecting fare from passenger, in fact, is a grave charge of misconduct, which in the present case stood proved. Though the Labour Court had concurred with the order of the appellate authority, confirming the order of the disciplinary authority, however, felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the misconduct, and accordingly set aside the order of removal, and directed his reinstatement into service without backwages by stopping one annual increment with cumulative effect. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages, and more so when the finding of guilty conduct of the petitioner recorded by the enquiry officer, was not disturbed by the Labour Court.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate authority, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the

fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 21st July, 2006.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63